

STATE OF VERMONT

**SUPERIOR COURT
Caledonia Unit**

**CIVIL DIVISION
Docket No. 235-10-18 Cacv**

William Hill
Plaintiff

v.

Sven Olson,
Defendant

**FILED
DEC 16 2019
CALEDONIA COURTS**

DECISION ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

In this case, Defendant Sven Olson has moved for summary judgment on Plaintiff William Hill's claim that he still holds a life estate in real property located in Hardwick, Vermont. Sven Olson is represented by Attorney Kristina Michelsen. William Hill was represented in prior proceedings, but counsel withdrew just as this motion ripened. Plaintiff Hill proceeds pro se.

Procedural Background

Plaintiff Hill filed this case in October 26, 2018, seeking a preliminary injunction and declaratory judgment on the grounds that Defendant Olson wrongfully interfered with his tenancy on the Porter Brook Road property, and that his life estate should be restored and/or that he is entitled to compensation for the value of the life estate. In response, Defendant Olson denied allegations of interference and Hill's continuing interest in the property and filed a counterclaim.

Defendant moved for summary judgment on July 1, 2019, supporting his request and assertions of fact with a number of affidavits and other documents properly presented under V.R.C.P. Rule 56. Plaintiff, who now is a self-represented litigant, filed many pages in opposition to Defendant's motion but the court cannot consider the bulk of them in its decision because they were not presented in a manner that could allow the court to do so. It is clear Mr. Hill opposes the motion for summary judgment, however, being without counsel, he has not properly provided factual support for his opposition.

Uncontested Facts

The property at issue in this case is located at 909 Porter Brook Road (sometimes referred to as 600 or 601 Porter Brook Road) in Hardwick, Vermont. William Hill was a licensed real estate agent for about 50 years. He and his now deceased wife, Charlotte Hill, built a nice home on the property. The property is rural and agricultural. Charlotte was diagnosed with cancer in 2013 and died in 2018.

Charlotte's son, Ronald Aldrich, purchased the property from Charlotte and William on December 5, 2002. The deed executed on that date conveyed the residence and 30 acres to Ronald but reserved a life estate for Mr. and Ms. Hill. Ronald did not live at the property.

In June 2007, the U.S. District Court of Vermont sentenced Ronald to prison on charges related to drug smuggling and money laundering, and ordered him to forfeit his interest in multiple properties, including the Porter Brook Road property. William and Charlotte Hill objected to the forfeiture of their interest in the property and as a result, entered into a stipulation with the federal government which redefined their interest in the property. The agreement preserved their life estate as detailed in the December 5, 2002 deed but changed the terms of its expiration. The following terms were included in the settlement agreement that both Charlotte and William signed, unrepresented, on February 20, 2008:

15. Subject to the terms of this agreement, the Hills each agree to the entry of a final order of forfeiture in the criminal proceeding that orders the forfeiture of the remainder interest in the Real Property (formerly held by Ronald Aldrich) to the United States. Subject to the terms of this agreement, the Government agrees that the Hills retain their estate interest in the Real Property as reflected in the deed executed on December 5, 2002 and recorded in the Town of Hardwick at Volume 114, Page 150 of the Hardwick Land Records.

16. The Hills each agree that they will not transfer, or otherwise convey their life estate interest to a third party.

17. The Hills each agree that their life estate in the Real Property expires upon the earliest of the following two events:

- (1) The Hills both become deceased, or
- (2) The Hills permanently vacate the Real Property.

Upon the occurrence of either of the above events, the Hills, and/or their heirs, have 30 days to remove all personal property from the Real Property. After that time, all personal property will be presumed to be abandoned and may be liquidated or destroyed by the U.S. Marshals Service or its assigns without any accounting of the proceeds to the Hills or their heirs.

18. The Hills, jointly and severally, agree to timely pay all property taxes currently due and owing and to timely pay all future property taxes that come due throughout the duration of their life estate. The Hills, jointly and severally, also agree to maintain sufficient property (homeowners) insurance on the Real Property. . . .

19. The Hills, jointly and severally, agree to exercise ordinary care to maintain the Real Property and make such repairs as necessary to preserve the Real Property in the condition it is in at the time of signing this settlement agreement.

20. In the event that the Hills: (1) fail to pay the property taxes on the Real Property within 120 days of the date such taxes are due; (2) fail to maintain sufficient real property (homeowners) insurance on the Real Property for any time period during their life estate;

(3) *permanently vacate* the Real Property; or (4) fail to maintain the Real Property in its present condition, the Hills agree that their interest in the Real Property is subject to sale by the U.S. Marshals Service or its assigns. From the proceeds of such sale, the Hills agree they would be entitled to only the fair market value of their life estate interest less any property taxes owed and/or the cost of necessary repairs; the U.S. Marshals Service or its assigns would be entitled to the remainder of the proceeds

27. If the Hills abandon or permanently vacate the Real Property, they shall notify the U.S. Marshals Service immediately and the Real Property shall thereupon become wholly the property of the United States

United States v. Ronald Aldrich, Criminal No. 2:03-CR-147-01 (D. Vt. Mar. 6, 2008) (emphasis added).

On August 3, 2012, Defendant Sven Olson purchased the property from the United States through the 909 Porter Brook Road Realty Trust. Defendant Olson purchased the property as a vacation home. The Hills were living on the property as their primary residence at the time and the deed for that sale recognizes their life estate.

The Hills held an auction selling their cattle and machinery on June 14, 2016. On June 1, 2017, they purchased real property on Dutton Road in Hardwick, VT, and subsequently moved into that property.¹

The Hills held a second auction at the Porter Brook Road property in July 2017 for their personal property. At this auction, Mr. Hill handed the keys to the property to Mr. Olson, the principal of the trust which had purchased the property. Mr. Olson had no knowledge of any intent on the part of the Hills to return to the residence at Porter Brook Road. In this respect, Mr. Hill did not advise Mr. Olson that he had any intention to return. Nor did Mr. Hill tell anyone he

¹ The court is aware of Plaintiff Hill's assertions that Sven Olson and his family unreasonably entered the property in contravention to the life estate he and his wife held, and that he and his wife were so upset that they felt they had to leave and "establish another primary residence." Defendant Olson has introduced substantial evidence through affidavits from Kelly Lacourse and Ronald Aldrich as witnesses, and narratives from the Hardwick Police, which distinctly paint a different picture as to the source of Mr. and Ms. Hill's unhappiness. The exhibits submitted by Defendant Olson describe Leigh Kidder's presence on the property as a source of conflict, but not Defendant Olson or his family. Plaintiff Hill's contentions as to any inappropriate conduct by Defendant Olson have not been adequately presented to the court and thus the court does not consider them. V.R.C.P. 56(c) (among other things, requiring a party asserting that a fact is genuinely disputed to support the assertion by filing a separate and concise statement of undisputed or disputed material facts in accordance with subdivision c and referencing specific materials in the records, or showing that materials cited do not establish the absence of a genuine dispute).

planned to return to the premises to live out his life estate, rather he had no plans at that time other than to care for his wife who was very ill with cancer.²

After being given the keys at the June 2017 auction, Mr. Olson started staying in the Porter Brook Road residence, making renovations to the property as well as commencing a business in the Hardwick community.

Mr. Olson purchased, at auction, a trailer which had been occupied by one of Charlotte Hill's granddaughters, Leigh Kidder.

Analysis

A court will grant a motion for summary judgment if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. Rule 56(a); *Gauthier v. Keurig Green Mountain, Inc.*, 2015 VT 108, ¶ 13, 200 Vt. 125, 133. It is up to the movant to prove the absence of any genuine issue, and "the nonmoving party receives the benefit of all reasonable doubts and inferences." *Robertson v. Mylan Labs., Inc.*, 2004 VT 15, ¶ 15, 176 Vt. 356, 363. However, a party opposing a summary judgment motion "cannot simply rely on mere allegations in the pleadings to rebut credible documentary evidence or affidavits . . . but must respond with specific facts that would justify submitting her claims to a factfinder." *Id.* "If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may . . . consider the fact undisputed for purposes of the motion." V.R.C.P. Rule 56(e).

Because the Hills agreed in the February 2008 settlement agreement that the Porter Brook Road property would be subject to sale in the event that they "permanently vacate[d] the Real Estate," the critical question is whether Mr. Hill and Ms. Hill, in fact, permanently vacated the property when they left the residence.³ The court concludes that they did. In this case, the Hills had an initial auction in June 2016, at which they sold their cattle and machinery, property associated with the use of the real estate. Subsequently, the Hills purchased and moved into a new residence on Dutton Road. In July 2017, the Hills held still another auction for the sale of their personal property at Porter Brook Road. At the same time, the Hills gave Defendant Olson the keys to the property without any mention of an intent to return. Plaintiff Hill has admitted that his only plan was to care for his ailing wife. Further, the record is devoid of any admissible evidence from which the court could conclude that Defendant Olson forced the Hills to vacate

² These uncontested facts are derived from Plaintiff's responses to requests to admit. See V.R.C.P. 36(b).

³ "No party has indicated that any of the other events triggering the sale clause of provision 20 of the settlement agreement—failure to pay the property taxes, failure to maintain property insurance, and failure to maintain the condition of the property—arose before the federal government sold the property to Defendant Olson."

their former residence.⁴ Under these circumstances, the court finds that the Hills did not intend to return to or remain on the subject property.

In sum, Plaintiff Hill has not provided evidence to contradict Olson's assertions of fact in a manner that could show that there is a genuine issue of material fact. Plaintiff Hill's own allegations are the sole support for his claims that Defendant Olson interfered with his life estate and that he did not intend to permanently vacate the Porter Brook Road property when he moved out. Such conclusory allegations do not suffice to defend against a motion for summary judgment. *Mello v. Cohen*, 168 Vt. 639, 641 (1998) ("[T]o defend against a summary judgment motion, a plaintiff cannot rely on conclusory allegations or mere conjecture."). Accordingly, the court concludes that summary judgment is warranted as a matter of law.

Defendant Olson has also raised an equitable estoppel argument in his motion for summary judgment. The doctrine of equitable estoppel is an affirmative defense. V.R.C.P. Rule 8(c); *Mellin v. Flood Brook Union Sch. Dist.*, 173 Vt. 202, 221 (2001). Grounded in public policy, "equitable estoppel works to prevent one party from asserting rights which may have existed against another party who in good faith has changed his or her position in reliance upon earlier representations." *Fisher v. Poole*, 142 Vt. 162, 168 (1982). "All of the circumstances of the case must be evaluated in determining whether the doctrine applies, but generally it 'will not be invoked in favor of one whose own omissions or inadvertences contributed to the problem.'" *Beecher v. Stratton Corp.*, 170 Vt. 137, 140 (1999) (quoting *Fisher*, 142 Vt. at 169). The burden is on the party claiming estoppel to establish four elements:

first, the party to be estopped must know the facts; second, the party being estopped must intend that his conduct shall be acted upon or the acts must be such that the party asserting the estoppel has a right to believe it is so intended; third, the latter must be ignorant of the true facts; and finally, the party asserting the estoppel must rely on the conduct of the party to be estopped to his detriment.

Fisher, 142 Vt. at 168; *In re Langlois/Novicki Variance Denial*, 2017 VT 76, ¶ 12, 205 Vt. 340, 346 (2017) (also relying on these elements).

Here, the first element is met because Plaintiff Hill knew of his own intentions when he and Charlotte left the Porter Brook Road property. Second, Plaintiff Hill's conduct in holding two auctions, purchasing a new home, and then giving Defendant Olson the keys to the Porter Brook Road property, would have reasonably led Olson to believe that Plaintiff Hill intended for him to take possession. Third, Defendant Olson did not know that Hill intended to return to the property. Finally, Defendant Olson relied on Plaintiff Hill's conduct to his detriment by investing financial resources into renovations on the property and opening a business in the community.

⁴ Notably, even if the conduct of Mr. Olson prompted the Hills to depart the subject property, such reason for their departure would not, in itself, evince an intent to vacate the residence only temporarily.

Given that Defendant Olson has met his burden for estoppel, the court additionally finds that it would be inequitable to now allow Plaintiff Hill's change of heart with regard to having left the life estate to impede Defendant Olson's established rights. Having permanently vacated the property, Plaintiff no longer has a life estate on the Porter Brook Road property, and he is estopped from asserting one.

Order

For the foregoing reasons, Defendant's motion for summary judgment is granted.

While not addressed in the pleadings, even though Mr. Hill no longer has a life estate which supports occupancy, having permanently vacated the property, it appears that he is entitled to have his life estate valued and receive compensation. The court does not see the District Court's order as one which creates a forfeiture for the Hills when they move out. Although the language of the agreement leaves a number of questions, it does appear to contemplate compensation upon vacating the property. The court will thus schedule the matter for further status conference to hear from the parties on how this case should proceed.

In any event, Mr. Hill has no right to re-enter the property. A reasonable reading of the agreement would not allow him to change his mind after permanently vacating the property.

Judgment for Olson on the motion for summary judgment.

12/16/19

Hon. Robert R. Bent /msz
Hon. Robert R. Bent